

These terms and conditions (“Contract”) are applicable to all interactions between the Lessor, Lessee and Bull Man.

1. Definitions

- 1.1 “Bull Man” means BYL Limited, its successors and assigns or any person acting on behalf of and with the authority of BYL Limited.
- 1.2 “Commencement Date” means the date that the Livestock are leased to the Lessee in accordance with the terms of this Contract;
- 1.3 “Commission” means the percentage of the Fee charged by Bull Man for its Services as set out in an invoice issued by Bull Man to the Lessee or Lessor;
- 1.4 “Contract” means these terms and conditions;
- 1.5 “Delivery” means the time that the Livestock either:
 - (a) cross the tailgate of the Lessee’s nominated carrier; or
 - (b) if driven on foot, leave the Lessor’s property.
- 1.6 “Delivery Address” means the delivery address specified by the Lessee to deliver the Livestock;
- 1.7 “Expiry Date” means the date that the Livestock leased to the Lessee in accordance with the terms of this Contract expires;
- 1.8 “Fee” means the amounts payable from the Lessee to the Lessor for the leasing of Livestock as specified in an invoice issued by Bull Man to the Lessee;
- 1.9 “Lessor” means the person/s leasing the Livestock to the Lessee and if there is more than one Lessor is a reference to each Lessor jointly and severally.
- 1.10 “Lessee” means the person/s leasing the Livestock and if there is more than one Lessee is a reference to each Lessee jointly and severally.
- 1.11 “Livestock” means all beasts supplied by the Lessor to the Lessee, under this Contract.
- 1.12 “PPSA” means the Personal Property and Securities Act 1999.
- 1.13 “Return Address” means the address specified by the Lessor to return the Livestock on the Expiry Date;
- 1.14 “Security Interest” has the meaning given to it in the PPSA.
- 1.15 “Services” means all services provided by Bull Man under this Contract.

2. Legally Binding Contract

- 2.1 The Lessor and Lessee are immediately bound by this Contract upon the Lessee and Lessor engaging Bull Man for the Services for the leasing of Livestock and this Contract applies to all Livestock leased by the Lessor to the Lessee (“**Engagement**”). This Contract will be deemed a legally binding agreement between Bull Man, the Lessor and the Lessee upon Engagement.
- 2.2 This Contract may only be amended with all parties consent in writing.
- 2.3 The Lessor and/or Lessee, upon acceptance of the Contract, give their irrevocable authorities to Bull Man to request and obtain from Livestock Improvement Corporation:
 - (a) Animal Transfer Certificates in respect of the Livestock;
 - (b) any information on the Lessor’s and/or Lessee’s records of Livestock pertaining to this Contract, before or after Delivery.
- 2.4 Termination or expiration of this Contract will not affect the rights and obligations of the parties accruing prior to termination or expiration or those rights and obligations intended to survive the termination or expiration.

3. Representation and Agency

- 3.1 The Lessor and Lessee acknowledge that Bull Man is appointed as their agent in respect of the lease of Livestock under this Contract and Bull Man may deduct Commission and any other monies owed to it from any or all of the accounts held by the Lessor and/or Lessee.
- 3.2 Bull Man is acting solely as an agent of the Lessor and/or Lessee. Should the Lessor and/or Lessee fail to comply with any of the terms and conditions of this Contract, or fail to complete the leasing arrangements for any reason whatsoever, or if a dispute arises in respect of these matters, Bull Man shall be under no liability to either party (whether in Contract, tort, negligence or otherwise), and in particular will not be responsible for any loss or damages sustained by either party, or both.

4. Goods and Services Tax (GST)

- 4.1 The Lessor and/or Lessee must pay GST, without deduction or set off, at the same time and on the same basis as they pay the Commission/Fee under this Contract. In addition, both the Lessor and Lessee shall be liable for the payment of any other taxes and duties that may be applicable in addition to the Commission/ Fee, except where they are expressly included therein.

5. Commission

- 5.1 Bull Man shall be entitled to deduct from or charge on the Fee the Commission for the Services, together with GST and any other charges.
- 5.2 Bull Man shall charge commission in respect of the Services.
- 5.3 Bull Man can either deduct Commission from the Fee or invoice separately.

6. Lease

- 6.1 The Lessor agrees to lease to the Lessee and the Lessee agrees to lease the Livestock in accordance with the terms set out in this Contract.

7. Delivery of the Livestock

- 7.1 Unless the parties make other arrangements, the Lessee is responsible for the cost of delivery of the Livestock to the Lessee by the Commencement Date, and to the Delivery Address.

- 7.2 The parties shall comply with all legislative and regulatory requirements relating to the movement of Livestock.
- 8. Risk and Care of the Livestock**
- 8.1 Risk of damage to or loss of the Livestock passes to the Lessee at the time of Delivery of the Livestock.
- 8.2 Livestock will remain at the Lessee's risk until unloaded at the Lessor's land or other place notified by Bull Man to the Lessee in writing. Unless both parties make other arrangements, Bull Man will be responsible for the cost of moving or of Delivery of the Livestock off the Lessee's premises at the Expiry Date.
- 8.3 Unless otherwise agreed, the Lessor shall, from the date this Contract is signed, to the Commencement Date, properly feed and attend to the Livestock as a prudent farmer would having regard to the nature and quality of the Livestock at the time of signing this Contract, the nature of the Lessor's farm, the district in which the Lessor is situated, and the prevailing climatic conditions, and will if necessary obtain suitable off-farm grazing or additional supplementary feed to ensure that the Livestock are presented to the Lessee on the Commencement Date in a state consistent with the fulfilment of the Lessor's obligations under this Contract.
- 8.4 Unless otherwise agreed between the parties, the Lessee shall, from the Commencement Date to the Expiry Date, properly feed and attend to the Livestock as a prudent farmer would having regard to the nature and quality of the Livestock at the time of Delivery, the nature of the Lessor's farm, the district in which the Lessor is situated, and the prevailing climatic conditions, and will if necessary obtain suitable off-farm grazing or additional supplementary feed to ensure that the Livestock are presented to the Lessor at the Expiry Date in a state consistent with the fulfilment of the Lessee's obligations under this Contract.
- 8.5 An insurance option to cover injury or death of Livestock is available to the Lessee. Any such insurance cover requested by the Lessee is arranged by Bull Man.
- 8.6 If insurance cover is not taken by the Lessee and an injury or death of Livestock occurs, the Lessee is liable to reimburse Bull Man or the Lessor (whomever is the owner) for the current market value of that particular Bull.
- 8.7 The Lessor and/or Bull Man may inspect the Livestock's condition during the term of the Lease at the Lessee's premises or location of the Livestock on a date mutually agreed between the Lessor and/or Bull Man. Bull Man or its agents will have the right to enter into the premises and remove the Livestock from the Lessee's land, if in its sole discretion, the Lessee's treatment of the Livestock is unsatisfactory.
- 9. Lessor's Guarantees and Warranties**
- 9.1 All Livestock must have a T.B status prior to Delivery. The Lessor warrants that the Livestock are tested for Tuberculosis ("TB"), Bovine Viral Diarrhoea ("BVD") and vaccinated for BVD and Leptospirosis prior to the Commencement Date. An Animal Status Declaration will be provided to the Lessee (or their nominated carrier) on the Commencement Date at the Lessee's request.
- 9.2 The market value of the Livestock at the Commencement Date for the purposes of this Contract will be the market value, if any, as specified by Bull Man. If no market value has been specified the market value of the Livestock at the Commencement Date will be as agreed by the parties. If the parties fail to agree on the market value, the parties will obtain an independent valuation. The Lessor and Lessee will share equally the costs associated with the independent valuation.
- 9.3 This Contract applies to all Livestock leased by the Lessor to the Lessee as replacements for Livestock as though such Livestock were the Livestock originally specified in this Contract.
- 9.4 Except as specifically provided for in this Contract, the Lessee shall have no claim in respect of any Livestock of which Delivery has been taken.
- 9.5 The Lessee acknowledges both the authenticity and accuracy of all animal records supplied by either the Lessor and/or Bull Man. The Lessee acknowledges that the Livestock is leased relying solely upon the Lessee's personal skill and judgement, and that the Lessee do not rely upon any assurances or statements provided by the Lessor and/or Bull Man.
- 10. Consumer Guarantees Act 1993**
- 10.1 The Lessor and/or Lessee acknowledge that to the extent permitted by law, the provisions of the Consumer Guarantees Act 1993 do not apply to this Contract if the Lessee is leasing Livestock for the purposes of a trade or business.
- 11. Limitation of Liability**
- 11.1 Despite anything else contained in this Contract:
- (a) the parties agree and acknowledge that if the Livestock supplied by Bull Man and acquired by the Lessor and/or Lessee are supplied or acquired in trade within the meaning of the Fair Trading Act 1986, that to the extent permitted by law sections 9, 12A, and 13 of the Fair Trading Act 1986 will not apply to this Contract, and that it is fair and reasonable to exclude their application;
 - (b) the parties agree and acknowledge that (to the extent permitted by law) the provisions of Part 3 of the Contract and Commercial Law Act 2017 will not apply; and
 - (c) unless these terms expressly provide otherwise, to the fullest extent permissible by law, all warranties, conditions or other terms implied by law are excluded.
- 11.2 The Lessor and Lessee agree and acknowledge that Bull Man (including its agents) will not be liable to the Lessor or the Lessee for any special, indirect or consequential loss or damage (including lost profits) suffered, or incurred by the Lessor or Lessee arising out of, or in connection with this Contract.
- 11.3 Bull Man will not be liable to the Lessor and Lessee, or any third party in relation to the lease of Livestock and the Lessor and Lessee, jointly and severally indemnifies Bull Man against any such liability.
- 11.4 Notwithstanding clause 11.3, in the event Bull Man is found liable for any loss or damage, Bull Man's total liability to the Lessor and/ or Lessee in connection with this Contract, whether arising under contract, tort, breach of statutory duty or any other legal or equitable theory, will not exceed the Fee paid by the Lessee for the Livestock under the Contract.

- 11.5 None of the parties to this Contract shall be under any liability whatsoever to the other parties for any indirect and/or consequential loss and/or expense (including loss of profit) suffered as a result of a breach by any of the parties of these terms and conditions.
- 12. Default and Consequences of Default**
- 12.1 Interest on overdue amounts (whether the Fee or Commission) shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and such interest shall compound monthly at such a rate) after as well as before any judgment.
- 12.2 In the event of any default by the Lessee and/or Lessor, the defaulting party shall be liable for all costs and disbursements for the recovery of the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, collection agency costs, and bank dishonour fees).
- 12.3 Further to any other rights or remedies Bull Man may have under this Contract, if a Lessee and/or Lessor has made payment to Bull Man, and the transaction is terminated, the Lessee and/or Lessor shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by Bull Man under this clause 12 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Lessee and/or Lessor's obligations under this Contract.
- 12.4 Without prejudice to other remedies at law:
- (a) if at any time the Lessor and/or Lessee is in breach of any obligation (including those relating to payment) under this Contract, Bull Man may (as an agent for the affected party) notify the parties of the breach and require remedy within 14 days and if the breach remains unremedied can terminate the Contract. Bull Man and the affected party will not be liable for any loss or damage suffered by the defaulting party due to exercising the right to enforce this clause.
- (b) Bull Man shall be entitled to terminate all or any part of the Contract which remains unfulfilled and all amounts owing to Bull Man shall, whether or not due for payment, become immediately payable if:
- (i) any money payable becomes overdue, or in Bull Man's opinion the defaulting party will be unable to make a payment when it falls due;
- (ii) the defaulting party becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (iii) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the defaulting party or any asset of the defaulting party.
- 12.5 Upon termination of this Contract, the Lessee will immediately return all Livestock owned by the Lessor to the Lessor's Return Address at the Lessee's sole cost.
- 13. Privacy Act 2020**
- 13.1 The Lessor and Lessee authorise Bull Man or Bull Man's agent to:
- (a) access, collect, retain and use any information about them;
- (i) (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing their creditworthiness; or
- (ii) for the purpose of marketing products and services to them; or
- (iii) for the purposes of fulfilling its obligations to SVS under this Contract.
- (b) disclose information about them, whether collected by Bull Man from them directly or obtained by Bull Man from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by them.
- 13.2 Where the Lessor and/or Lessee is an individual the authorities under clause 13.1 are authorities or consents for the purposes of the Privacy Act 2020.
- 13.3 The Lessor and/or Lessee shall have the right to request Bull Man for a copy of the information about them retained by Bull Man and the right to request Bull Man to correct any incorrect information about them held by Bull Man.
- 14. Security Interest**
- 14.1 The Lessor acknowledges that it grants to Bull Man a Security Interest (in priority to any Security Interest the Lessor grants to any other party) in the Livestock during the term of the lease between the Lessor and Lessee.
- 14.2 The Lessor acknowledges and agrees to enter into further documentation and provide Bull Man with all information as required to enable Bull Man to register a financing statement pursuant to the PPSA.
- 15. Personal Property Securities Act 1999**
- 15.1 The Lessor and Lessee acknowledges and agree that:
- (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
- (b) a security interest is taken by the Lessor and Bull Man in all Livestock (including any offspring of the Livestock) and/or Services previously supplied (if any) and all Livestock and/or Services that will be supplied in the future.
- 15.2 The Lessor and/or Lessee undertake to:
- (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which may reasonably be required to register a financing statement or financing change statement on the Personal Property Securities Register;
- (b) be liable for all expenses for the registration of a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA, or releasing any registration made thereby;
- (c) not register a financing change statement or a change demand without prior written consent of the other parties.
- 15.3 The Lessor and/or Lessee agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 15.4 The Lessor and/or Lessee waive their rights as debtors under sections 116, 120(2), 121, 125, 126, 127, 129 and 131 of the PPSA.
- 15.5 The Lessor and/or Lessee shall unconditionally ratify any actions taken under clauses 15.1 to 15.4.

16. Lien

- 16.1 Where the Lessee and/or Lessor has left any item with Bull Man in relation to this Contract, and Bull Man has not received or been tendered the whole of any moneys owing to it by them, Bull Man shall have, until all moneys owing to Bull Man are paid:
- (a) a lien on the item; and
 - (b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation or common law applicable to the sale or disposal of uncollected goods.
- 16.2 The lien of Bull Man shall continue despite the commencement of proceedings, or judgment for any moneys owing to Bull Man having been obtained against the Lessor and/or Lessee.

17. Right of Entry

- 17.1 If the Lessee fails to make any payment under the Contract in whole or in part, the Lessee hereby irrevocably gives license to Bull Man and/or the Lessor with or without vehicles and machinery to enter upon and if necessary break into any real property or building occupied by the Lessee where the Livestock may be or may be supposed to be and to search for and take possession of the Livestock and remove them without being in any way liable to the Lessee or any other party claiming under the Lessee for so doing. Bull Man and/or the Lessor is under no obligation to give any notice of its intention to exercise its right contained in this clause.

18. Service of Notices

- 18.1 Any written notice given under this Contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
 - (b) by leaving it at the address of the other party as stated in this Contract;
 - (c) by sending it by registered post to the address of the other party as stated in this Contract;
 - (d) if sent by email to the other party's last known email address.
- 18.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

19. Dispute Resolution

- 19.1 Where any question, dispute or difference ("**Dispute**") arises between the parties concerning or in any way arising out of this Contract or the performance of either party in terms of this Contract, the parties will co-operate to resolve the question, dispute or difference without resorting to litigation using the procedures set out in this clause.
- 19.2 The party seeking resolution of a Dispute (the "**First Party**") must provide written notice of the same to the other party (the "**Other Party**") or other parties (the "**Other Parties**").
- 19.3 If the parties are unable to resolve the Dispute by discussion and negotiation within 14 days of receipt of the written notice from the Other Party or Other Parties (or a timeframe as otherwise agreed), then the parties must immediately refer the Dispute to mediation.
- 19.4 The mediation must be conducted by a mediator and at a fee agreed by the parties. Failing agreement between the parties, the mediator will be selected and his/her fee determined by the President or Vice president of the Arbitrators' and Mediators' Institute of New Zealand.
- 19.5 The mediator's fee will be borne equally between the parties involved in the Dispute.
- 19.6 If the Dispute remains unresolved after the mediation, then the dispute must be submitted to the arbitration of a single arbitrator agreed on between the parties, or in default of agreement to be nominated by the President or Vice president of the Arbitrators and Mediators Institute of New Zealand. The arbitration will be conducted in accordance with the Arbitration Act 1996 and the provisions of the Second Schedule of the Act will apply. The parties reserve the right to appeal to the High Court on any question of law arising out of an award.
- 19.7 Nothing in this clause will preclude or prevent either party from taking immediate steps to seek urgent interlocutory relief before an appropriate court.

20. General

- 20.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 20.2 This Contract shall be governed by the laws of New Zealand and are subject to the non-exclusive jurisdiction of the Courts of New Zealand.
- 20.3 The Lessor and/or Lessee shall not be entitled to set off against, or deduct from the Fee/Commission, any sums owed or claimed to be owed to them, nor to withhold payment of any invoice because part of that invoice is in dispute.
- 20.4 None of the parties shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond their reasonable control.
- 20.5 The Lessor and/or Lessee warrant that they have the power to enter into this Contract, has obtained all necessary authorisations to allow them to do so, is not insolvent and that this Contract creates binding and valid legal obligations on it.
- 20.6 This Contract constitutes the sole understanding of the parties in relation to its subject matter and supersede all prior understandings, written or oral, which will be of no further force or effect.

21. Change in Control

- 21.1 The Lessor and/or Lessee shall give Bull Man not less than fourteen (14) days prior written notice of any proposed change of ownership of the Lessee or Lessor (if either the Lessee or Lessor are a company) and/or any other change in their details (including but not limited to, changes in their name, address, contact phone or fax number/s, or business practice).

22. Assignment

22.1 The rights and/or obligations of Bull Man under this Contract may be assigned or novated by Bull Man to any person. The Client may only assign its rights and/or obligations under this Contract with the prior consent in writing of Bull Man.

23. Relationship

23.1 This Contract does not create any relationship of partnership, agency, employment or joint venture between the parties.

24. Counterparts

24.1 This Contract may be executed in two or more counterparts, each of which shall be deemed an original but all of which together will constitute one and the same agreement. A facsimile copy of this agreement showing a representation of the signature of a party shall be deemed to be an original counterpart.